

**\* \* REASONS FOR AMENDMENTS AND REMARKS \* \***

Applicant wishes to acknowledge with appreciation the Examiner's analysis and efforts in examining this application. In particular, Applicant thanks the Examiner for the telephone interview with Applicant and Applicant's attorney on December 14, 2006, in which the references cited by the Examiner were discussed, including Balazs (U.S. Patent No. 5,522,094), Kennedy *et al.* (U.S. Patent No. 5,927,957), Ruo (U.S. Patent No. 4,186,451), Reid (U.S. Patent No. 5,154,821) and Lee (U.S. Patent No. 5,823,754) (hereinafter Balazs, Kennedy *et al.*, Ruo, Reid, and Lee, respectively). The Office Action and references cited by the Examiner have been thoroughly studied. The present amendment, along with the declarations submitted herewith, are believed to be sufficient to place this application in condition for allowance.

Claims 1-22 have been cancelled without prejudice. New Claim 23 has been added. Accordingly, Claim 23 is currently pending in this application.

**I. Claim Objections**

The Office Action asked that the term "selectively" be substituted for the term "selectably" in Claim 2. Since Claim 2 has been cancelled, this objection is now moot.

**II. Rejection under 35 U.S.C. § 112, second paragraph**

The Office Action rejected Claim 11 under 35 U.S.C. 112, second paragraph, as being indefinite. Since Claim 11 has been cancelled, this rejection is now moot.

### **III. Rejections under 35 U.S.C. § 102(b)**

The Office Action rejected Claims 1-5, 8-11 and 13-22 under 35 U.S.C. 102(b) as anticipated by Balazs. Since Claims 1-5, 8-11 and 13-22 have been cancelled, these rejections are now moot. Applicant reserves the right to claim the subject matter of Claims 1-5, 8-11 and 13-22 in continuation, continuation-in-part and/or divisional applications.

### **IV. New Claim 23**

Any rejection of new Claim 23 as anticipated by Balazs would be traversed because Claim 23 includes numerous limitations not taught, suggested or otherwise disclosed by Balazs. Moreover, the rejection of Claim 23 as obvious of Balazs in combination with one or more of Kennedy *et al.*, Ruo, Reid, and Lee would also be traversed as explained below.

- a. ***“said conically shaped portion being dimensioned such that at least half of said conically shaped portion extends into the clogged plumbing drain . . . said conically shaped portion having a greater length than maximum width”***

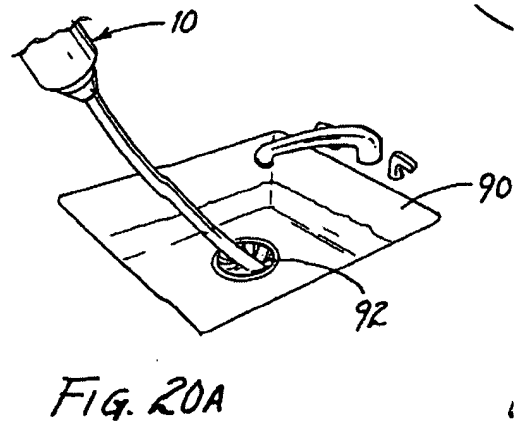
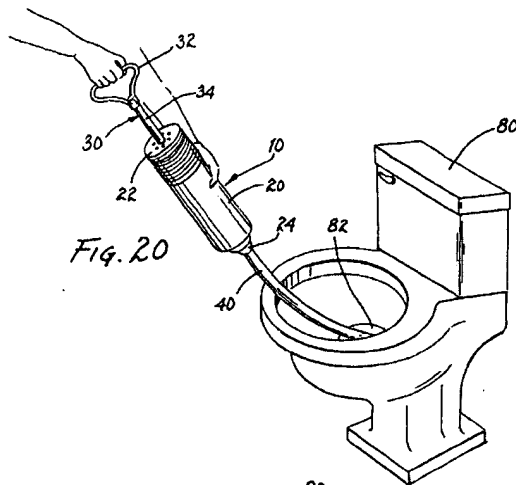
Claim 23 includes the following limitations: “said conically shaped portion being dimensioned such that at least half of said conically shaped portion extends into the clogged plumbing drain” and “said conically shaped portion having a greater length than maximum width.” These limitations have support in at least in Figures 2 and 3.

As discussed in the interview, the length of the conically shaped portion reduces the possibility of splashing since the adapter opening is disposed deeper into the drain when the clog liquid is propelled out of the adapter opening. In Figure 2 of Balazs, the collar member 44 barely extends into the drain opening 58, which increases the likelihood of splashing. In the

interview, the Examiner contended that the extent to which the collar member 44 of Balazs extends into the drain opening 58 depends on the size of the drain opening, which is true, but this overlooks the structural differences between Balazs and Applicant's claimed invention. The length with which Balazs' frustum shaped portion 48 extends from the collar member 44 restricts the extent to which the opening 50 is disposed within the drain. In other words, even if almost the entire frustum shaped portion 48 of Balazs were disposed within the drain, the opening 50 would not extend very far into the drain because of the limited length of the frustum shaped portion 48. The feature of Claim 23 in which "said conically shaped portion [has] a greater length than maximum width" stands in stark contrast to the length of Balazs' frustum shaped portion 48. In Balazs, the frustum shaped portion's 48 length does not appear to be even one-third of its maximum width.

Aside from the hindsight of Applicant's invention, there is no motivation to lengthen Balazs' frustum shaped portion, particularly not more than three times the length shown in the drawings of Balazs. The reason for Balazs' frustum shaped portion 48 is to accommodate a variety of drain sizes. See Balazs at Col. 5, lns. 20-29. If one desired to accommodate a larger drain size, the maximum diameter of Balazs' frustum shaped portion 48 would be made larger; likewise, the minimum diameter of Balazs' frustum shaped portion 48 would be made smaller if a smaller diameter pipe was desired to be accommodated. However, there is no teaching, suggestion or motivation in Balazs to lengthen the frustum shaped portion to have a greater length than maximum width.

In the interview, the Examiner contended it would be obvious to modify Balazs with a longer frustum shaped portion 48 based on the front component 24 taught in Kennedy *et al.* This logic is erroneous for multiple reasons. First, the Examiner's reasoning assumes motivation to lengthen the frustum shaped portion 48 of Balazs, even though none exists. Second, a reading of Kennedy *et al.* shows that the function of the front component 24 bears no relationship with the function of the frustum shaped portion 48 of Balazs. In Kennedy *et al.*, the front portion 24 is merely a transition piece and is not intended to be inserted into the clogged drain, as seen from Figures 20 and 20A reproduced below. Instead, Kennedy *et al.* teaches that the outlet tip 42 is inserted into the clogged area. See Kennedy *et al.* at Col. 6, lns. 15-17 and Fig. 10.



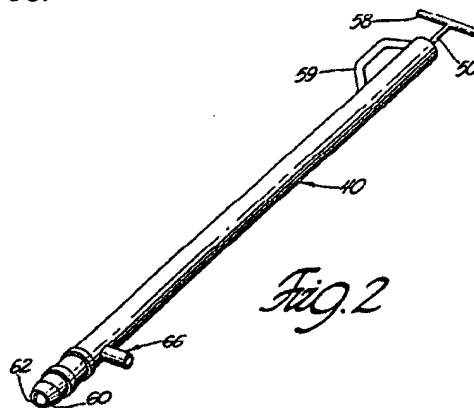
The Examiner's assertion that it would be obvious to modify Balazs with a longer frustum shaped portion 48 based on the front component 24 taught in Kennedy *et al.* is a classic example of impermissible hindsight where the Examiner is "picking and choosing" features from among numerous available features without any specific direction from the prior art to arrive at the claimed invention. See In re Fritch, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). To establish obviousness based on a combination of elements disclosed in the prior art in multiple references, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that is being claimed. Dissecting a claimed invention into individual elements or limitations and combining several prior art references allegedly disclosing each limitation to arrive at an obviousness determination amounts to a hindsight reconstruction of Applicant's claimed invention.

- b. "a gripping portion extending from said vessel member substantially perpendicularly from a longitudinal axis of said vessel member, said gripping portion extending from said vessel member at least a distance that is as wide as a user's hand so that a user may apply a downward force substantially parallel with the longitudinal axis of said vessel member"***

Claim 23 requires "a gripping portion extending from said vessel member substantially perpendicularly from a longitudinal axis of said vessel member, said gripping portion extending from said vessel member at least a distance that is as wide as a user's hand so that a user may apply a downward force substantially parallel with the longitudinal axis of said vessel member." This limitation has support at least in Figure 5 and Page 10, ln. 21 through Page 11, ln. 2. In the interview, the Examiner agreed that Balazs does not disclose a gripping

portion that extends substantially perpendicularly from the vessel member. However, the Examiner contended that Balazs could be modified with a gripping portion based on either Reid or Lee. Applicant respectfully disagrees with this contention.

Reid discloses a pool pump primer 40 with a side handle 59 for carrying the primer 40. See Reid at Col. 5, lns. 51-53. A copy of the primer 40 is reproduced below for the Examiner's convenience. Even if one decided to modify Balazs to include the side handle 59 of Reid, this combination would not render Applicant's claimed invention obvious. To establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested by the prior art. See MPEP § 2143.03. In contrast to the limitation in Claim 23 in which the "gripping portion [extends] from said vessel member substantially perpendicularly from a longitudinal axis of said vessel member," the side handle 59 of Reid extends from the housing 42 at a substantial angle (perhaps at 20-30 degrees). Moreover, the portion of the side handle 59 that extends from the housing 42 (at about a 20-30 degree angle) is not "as wide as a user's hand" as recited in Claim 23. This can be seen by comparing the length of the angled portion that extends from the housing 42 with the handle 58.



Lee describes a manual pump and there is no mention whatsoever of a gripping portion. In the interview, the Examiner asserted that the flange extending from the upper portion of the first tubular member 50, which is not referred to with a reference number or described anywhere in Lee, could be the gripping portion. Applicant respectfully disagrees. Even if one modified Balazs to incorporate the flange shown in Lee, this combination would not render obvious the "gripping portion" recited in Claim 23. For example, the gripping portion of Claim 23 extends from the vessel member "at least a distance that is as wide as a user's hand." A comparison of the flange's size (F) versus the grip's size (G), which presumably would be the width of a user's hand, clearly shows that the flange is not dimensioned as wide a user's hand. Applicant has annotated Figure 4 of Lee below to clearly show that the flange does not meet the limitation recited in Claim 23.

Not the  
"gripping  
portion"

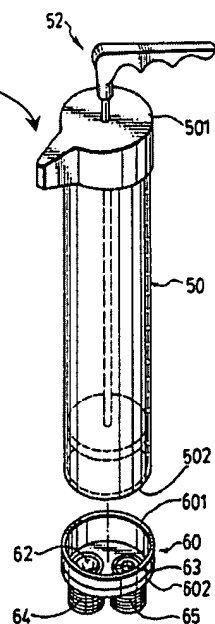


FIG.1

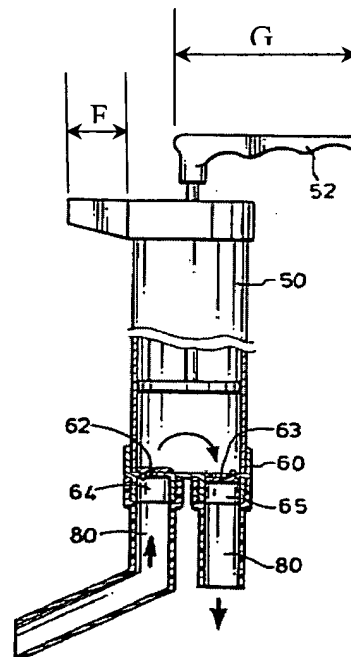


FIG.4

- c. “an end cap detachably coupled to said second vessel end of said vessel member, said end cap including a hole therethrough that is dimensioned to receive at least a portion of said piston actuator”*

Claim 23 also requires “an end cap detachably coupled to said second vessel end of said vessel member, said end cap including a hole therethrough that is dimensioned to receive at least a portion of said piston actuator.” This limitation has support at least in Figure 4 and the specification at Page 6, ln. 16 through Page 7, ln. 2. Balazs fails to teach or suggest this feature.

Instead, Balazs describes a recessed dome structure in the upper portion:

As shown in FIG. 1, the upper surface of the piston 16 is preferably provided with an upraised dome structure 32 that mates with a similarly recessed dome structure 34 provided on the interior surface of the first end of the cylinder 12. Additionally, as shown in FIG. 1, the piston handle 18 is preferably attached to the piston 16 by being embedded therein (although other methods of attachment are also possible), and the upraised dome structure 32 increases the rigidity of the embedded connection, while the corresponding recessed dome structure 34 permits the piston 16 to execute a full stroke by accommodating the upraised dome structure 32 at the top of the stroke.

Balazs at Col. 4, lns. 11-21. Absent the hindsight of Applicant’s invention, there is no motivation in Balazs to replace the recessed dome structure with an end cap.

*d. secondary considerations*

Along with this response, Applicant submits declarations from Lori Pfeiffer (Exhibit A), P.D. Rhoades (Exhibit B), Rick Mullendore (Exhibit C) and Jay Merideth (Exhibit D). These declarations offer objective evidence that Applicant’s claimed invention is



nonobvious. Pursuant to MPEP § 716.01(a), the Examiner must consider these declarations in determining the issue of obviousness.

**V. Nonstatutory Double Patenting Rejections**

The Office Action provisionally rejected Claim 1-5, 8-11 and 13-22 as obvious-type double patenting in view of Claim 1 and 3-9 of co-pending Application No. 11/402,708. Since Claims 1-5, 8-11 and 13-22 have been cancelled, this provisional rejection is moot.

**VI. Conclusion**

If, upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact Applicant's patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. To the extent additional fees are required, please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-1010 (37995/82816) and please credit any excess fees to such deposit account.

Respectfully submitted,



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